

In the Supreme Court

Appeal from the Michigan Court of Appeals
Honorable Richard A. Bandstra Presiding

CZYMBOR'S TIMBER, INC.
a Michigan Corporation, and
MICHAEL CZYMBOR,
an Individual

Plaintiffs-Appellants,

V

Docket No. 130672

CITY OF SAGINAW
a Municipal Corporation,

Defendant-Appellee,

and

SAGINAW CITY COUNCIL and
DEBRA KIMBLE, CITY MANAGER,
Jointly and Severally,

Defendants.

***BRIEF OF AMICUS CURIAE
MICHIGAN UNITED CONSERVATION CLUBS***

J. Kevin Winters (P59405)
Marc D. Matlock (P47240)
FOSTER ZACK LITTLE PASTEUR &
MANNING, PC
Attorneys for Amicus Curiae
Michigan United Conservation Clubs
2125 University Park Drive, Suite 250
Okemos, Michigan 48864
(517) 706-0000

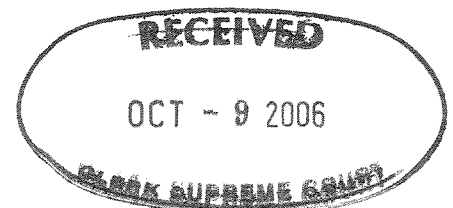


TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	ii
BASIS OF JURISDICTION	iv
STATEMENT OF QUESTION INVOLVED	v
I. INTRODUCTION	1
A. STATEMENT OF INTEREST	1
B. CASE BACKGROUND AND PRACTICAL IMPLICATIONS	2
C. THE ECONOMICS OF HUNTING IN MICHIGAN	2
II. STATEMENT OF FACTS.....	5
III. ARGUMENT AND LAW	7
A. STANDARD OF REVIEW	7
B. ABSENT AN EXCEPTION FOR LAWFUL HUNTING ACTIVITIES, THE ORDINANCES ARE PREEMPTED BY PART 419 AND OTHER PROVISIONS OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (“NREPA”), WHICH VEST IN THE MICHIGAN DNR THE EXCLUSIVE AUTHORITY TO REGULATE HUNTING IN MICHIGAN.	7
IV. CONCLUSION AND RELIEF REQUESTED.....	12

INDEX OF AUTHORITIES

Cases

<i>City of Taylor v The Detroit Edison Co.</i> , 475 Mich 109, 115; 715 NW2d 28 (2006)	8
<i>Czymbor's Timber, Inc. v City of Saginaw</i> , 269 Mich App 551; 771 NW2d 442 (2006)	2, 6, 7
<i>Grand Rapids v Consumers Power Co</i> , 216 Mich 409, 415; 185 NW 852 (1921)	1
<i>Homer Township v Billboards by Johnson, Inc.</i> , 268 Mich App 500, 502; 708 NW2d 737 (2006)	8
<i>Michigan United Conservation Clubs v City of Cadillac</i> , 51 Mich App 299; 214 NW2d 736 (1974)	7
<i>People v Llewellyn</i> , 401 Mich 314; 257 NW2d 902 (1977),	8

Statutes

MCL 324.40104.....	8
MCL 324.40105	11
MCL 324.40113a	2, 12
MCL 324.40113a(1)(a)	3, 11
MCL 324.40113a(1)(b)	3, 10
MCL 324.40113a(2)	8, 10, 11
MCL 324.41901	6, 7, 9, 10, 11
MCL 324.41901(1)	10
MCL 324.41901(2)	10
MCL 324.41902	9
MCL 324.41902(1)	10

Court Rules

MCR 7.301(A)(2).....	iii
----------------------	-----

Other Authorities

- Department of Natural Resources, *Natural Resources Boost Michigan's Economy*,
<http://www.michigan.gov/dnr/0,1607,7-153-10366-121641--,00.html>.....1
- Domsic, Melissa, *Bow hunters get start on deer season*, Lansing State Journal, October 2, 2006,
p. 1A.....3, 11, 12
- Saginaw City Ordinances, tit 10, §§ 130.02 and 130.03(D).....7
- U.S. Department of the Interior Fish and Wildlife Service and U.S. Department of Commerce,
U.S. Census Bureau, *2001 National Survey of Fishing, Hunting and Wildlife Associated
Recreation*.....3, 5, 12

BASIS OF JURISDICTION

This Court has jurisdiction over this matter pursuant to MCR 7.301(A)(2). By Order dated July 21, 2006 (Exhibit A), this Court granted Plaintiffs-Appellants' Application for Leave to Appeal from the published decision of the Court of Appeals issued January 26, 2006.

STATEMENT OF QUESTION INVOLVED

- I. WHERE STATE LAW VESTS IN THE MICHIGAN DEPARTMENT OF NATURAL RESOURCES THE EXCLUSIVE AUTHORITY TO REGULATE HUNTING IN MICHIGAN, CAN A MUNICIPALITY NEVERTHELESS PROHIBIT HUNTING BY PASSING AN ORDINANCE THAT MAKES IT UNLAWFUL TO DISCHARGE A FIREARM OR BOW AND ARROW ANYWHERE WITHIN THE MUNICIPALITY’S CORPORATE LIMITS?**

The Trial Court answered “Yes”;

The Court of Appeals answered “Yes”;

Defendant-Appellee, the City of Saginaw, would answer “Yes”;

Plaintiffs-Appellants Czymbor’s Timber, Inc., and Michael Czymbor answer “No”;

Amicus Curiae, Michigan United Conservation Clubs, answers “No”.

I. INTRODUCTION

A. STATEMENT OF INTEREST

With nearly 100,000 members and more than 500 affiliated clubs, Michigan United Conservation Clubs (“MUCC”) is the largest state-wide conservation organization in the nation. For more than sixty years, MUCC has worked to accomplish its mission of uniting citizens to conserve Michigan’s natural resources and to protect our outdoor heritage. MUCC works to conserve Michigan’s wildlife, fisheries, waters, forests, air and soils by providing information, education, and advocacy. In line with these goals, MUCC advocates for the wise and scientific management of Michigan’s natural resources through public policy and litigation.

MUCC’s purposes and objectives include protecting, defending, and advancing the shooting sports. Consistent with these objectives, MUCC has a vital interest in the outcome of any court decision that involves the authority of local governments in Michigan to regulate the discharge of firearms or the use of other sporting implements, particularly where those regulations negatively impact the sport of hunting.

In *Grand Rapids v Consumers Power Co*, 216 Mich 409, 415; 185 NW 852 (1921), this Court stated: “[t]his Court is always desirous of having all the light it may have on the questions before it. In cases involving questions of important public interest, leave is generally granted to file a brief Amicus Curiae. . .” MUCC believes that this case involves an issue of fundamental importance to MUCC and its members, as well as its affiliated clubs. MUCC’s experience and expertise will also be beneficial to this Court in resolving the substantive issues presented by this appeal. Accordingly, MUCC submits this Brief Amicus Curiae in support of the position of Plaintiffs-Appellants.

B. CASE BACKGROUND AND PRACTICAL IMPLICATIONS

At the heart of this case are two Saginaw City Ordinances (the “Ordinances”) that essentially prohibit the discharge of firearms and/or bows and arrows anywhere in the city. By not containing an exception for hunting activities, these Ordinances effectively make it illegal for anyone, including licensed hunters, to hunt game on property located anywhere within the city’s corporate limits.

Notwithstanding the legislature’s decision to commit the regulation of hunting activities exclusively to the Michigan Department of Natural Resources (MCL 324.40113a), both the trial court and the Court of Appeals upheld the Ordinances, refusing to find the city’s regulation of hunting activities preempted by state law. *Czymbor’s Timber, Inc. v City of Saginaw*, 269 Mich App 551; 771 NW2d 442 (2006). The impact of the Court of Appeals’ decision, should it be affirmed by this Honorable Court, cannot be overstated. Likely to follow the City of Saginaw’s lead, and with little regard for the sound, scientific management of Michigan wildlife, other municipalities will be free to adopt similar ordinances, resulting in a “patchwork” system of hunting regulation. Such a system has the potential to drastically impact both Michigan’s economy as well as the legitimate lifestyles of hundreds of thousands of Michigan sportsmen.

C. THE ECONOMICS OF HUNTING IN MICHIGAN

Like many other outdoor activities such as skiing, fishing, and golf, the sport of hunting plays a vital role in Michigan’s presently struggling economy. As Plaintiffs-Appellants correctly point out, with more than 750,000 participants, Michigan ranks *third in the nation* in the number of licensed hunters.¹ Through their activities, these sportsmen contribute \$1.3 billion annually to Michigan’s economy. *Id.* Michigan’s Department of Natural Resources (“DNR”) – to whom the

¹ See Exhibit B, Department of Natural Resources, *Natural Resources Boost Michigan’s Economy*, <http://www.michigan.gov/dnr/0,1607,7-153-10366-121641--,00.html> (accessed September 20, 2006).

exclusive authority to regulate hunting has been committed by law - manages the *largest dedicated state forest system in the nation*. *Id.* Each year, that system contributes *\$12 billion* to Michigan's economy, along with *200,000 associated jobs*. *Id.*

According to a recent national survey, 705,000 of Michigan's 754,000 hunters are Michigan residents.² In terms of dollars, these resident sportsmen, together with the 48,000 hunters who traveled to Michigan to hunt, *spent more than \$490 million* in Michigan in 2001. *Id. at 5, 11.* That year alone, Michigan's 48,000 non-resident hunters spent nearly \$32 million in Michigan. *Id. at 5.*

On October 2, 2006, the Lansing State Journal reported on this year's opening of bow-hunting season in Michigan.³ According to the State Journal's report, Michigan "has about 1.6 million deer, and about 350,000 people are expected to bow hunt this season, which runs until Nov. 14 and then from Dec. 1 to Jan. 1." *Id.* During that time, "bow hunters are expected to kill 100,000 of the 425,000 deer taken by all Michigan hunters this season." *Id.*

Given these figures, it is no surprise that Michigan's wildlife populations are considered "of paramount importance" to the citizens of this state. MCL 324.40113a(1)(a). Similarly, it is no surprise that the "sound scientific management" of Michigan's wildlife populations is declared to be "in the public interest." MCL 324.40113a(1)(b). As a hunter and property owner, Plaintiff Michael Czymbor is merely one of *more than three quarters of a million hunters* who stand to be affected by the decision in this case. No doubt standing along side Mr. Czymbor are the countless Michigan businesses who each year reap the financial benefits of Michigan's

² U.S. Department of the Interior Fish and Wildlife Service and U.S. Department of Commerce, U.S. Census Bureau, *2001 National Survey of Fishing, Hunting and Wildlife Associated Recreation*. (The "2001 National Survey") <http://www.census.gov/prod/2003putss/01fhw/fhw01-mi.pdf> (accessed September 14, 2006). Relevant portions of the 2001 National Survey are attached and collectively marked Exhibit C.

³ Domsic, Melissa, *Bow hunters get start on deer season*, Lansing State Journal, October 2, 2006, p. 1A, attached as Exhibit D.

hunting activities. In addition, the following groups/organizations and various individuals have expressed their support for MUCC's efforts in opposing the City's Ordinances through the filing of the instant brief:

Michigan Association of Gamebird Breeders and Hunting Preserves;

Michigan Bowhunters Association;

Michigan Gun Owners;

Michigan Trappers Association;

Michigan Resource Stewards;

The Cadillac Sportsman's Club;

District 12-Muskegon Bowmen, Inc.
(Paul Januseiewicz, Thomas Gregory, and Randall Mikkelsen);

Al W. Stinson, D.V.M.
Director of Legislative Affairs, Michigan Hunting Dog Federation;

Washtenaw Sportsman's Club and Gary D. Croel;

Michigan Duck Hunters Association
West Michigan Chapter;

Safari Club International (SCI)
Southeast Michigan Bowhunters Chapter
Rick Williams and Michael E Wills;

Great Lakes Shooting Sports Association;

Calhoun County Gun Owners Association;

Monroe County Rod and Gun Club;

Huron Pointe Sportsmen's Association of Lenox, Michigan;

John Gartner, Marty Weber, and Paul Bentley.

Downriver Chapter of Whitetails Unlimited

[See email correspondence attached and collectively marked Exhibit E.]

II. STATEMENT OF FACTS

The underlying facts that give rise to the legal issue presently before this Court are simple and straightforward. Plaintiff Czymbor's Timber, Inc. ("Czymbor's") owns a 56-acre parcel of real property (the "Property") located within the corporate limits of the City of Saginaw (the "City").⁴ The Property has been used for hunting for many years, and Plaintiff Michael Czymbor personally and lawfully hunted deer on the Property in 1999, 2000, 2001, and 2002 (Plaintiffs' Brief at p. 2).⁵

As noted above, the City has adopted two Ordinances which it concedes "indirectly prohibit" firearm and bow hunting on Czymbor's Property. (*See* Defendant-Appellee's Brief in Opposition to Plaintiffs' Application for Leave to Appeal at p. 2.) As summarized by the Court of Appeals at pages 552-553 of its Opinion:

Saginaw City Ordinances, tit 10, § 130.02, states:

No person shall discharge or propel any arrow, metal ball, pellet, or other projectile by use of any bow, long bow, cross bow, slingshot, or similar device within the City limits.

Saginaw City Ordinances, tit 10, § 130.03(d), states:

- (1) Discharge Prohibited. It shall be unlawful for any person to discharge a firearm in the City.
- (2) Exceptions. It shall not be a violation of this section to discharge a firearm under the following conditions:
 - (a) In the protection of life;
 - (b) Law enforcement officers in the performance of their duties;
 - (c) An established and lawfully permitted educational program properly supervised;
 - (d) Military functions, such as parades, funerals, firing blank charges.

⁴ See "Brief of Plaintiffs-Appellants Czymbor's Timber, Inc. and Michael Czymbor" ("Plaintiffs' Brief") at p.2.

⁵ Mr. Czymbor is certainly not alone in this regard. As will be discussed further below, according to the 2001 National Survey, 79% (595,000) of all hunters who hunt in Michigan hunt on private land. Of those 595,000 hunters, more than 95% (570,000) are Michigan residents. (*See* 2001 National Survey, Exhibit C at p. 24, Table 14).

[*Czymbor's Timber*, *supra* at 552-553.]

On November 5, 2003, after the DNR based on the Ordinances denied Mr. Czymbor a hunting permit, he along with Czymbor's (collectively "Plaintiffs") filed suit challenging the Ordinances in Saginaw Circuit Court. (*See* Plaintiffs' Brief at p. 6; *See also* Plaintiffs' Complaint for Declaratory Judgment and Injunctive Relief, Plaintiffs' Appendix at pp. 6a – 25a.) Following a hearing held on October 18, 2004, the Circuit Court granted summary disposition in favor of the City. (Plaintiffs' Brief at pp. 6-7.) In an Opinion and Order dated November 24, 2004, the Circuit Court, citing the purpose of the Ordinances, held that the City could broadly prohibit the discharge of firearms under its police powers notwithstanding the effect on otherwise lawful hunting activities. In relevant part, the Circuit Court reasoned:

The City of Saginaw has an important interest in protecting its citizens and a right to regulate the discharge of firearms under its police powers, which exceeds the interests of hunting. The purpose of enacting these ordinances is based upon safety and not to indirectly regulate hunting. Although the DNR retains power and may regulate and prohibit hunting in the interest of public safety and the general welfare, pursuant to MCL §324.41901, that is not the issue here. Firearm control is a subject distinct from the field of hunting, and the DNR Act does not preempt the local ordinances enacted by the City of Saginaw.

[Opinion and Order granting Defendants' Motion for Summary Disposition, Plaintiffs' Appendix at pp. 90a-91a.]

After their Motion for Reconsideration was denied, Plaintiffs pursued an appeal by right to the Court of Appeals. Relying heavily on its previous decision in *Michigan United Conservation Clubs v City of Cadillac*, 51 Mich App 299; 214 NW2d 736 (1974), the Court of Appeals agreed with the Circuit Court that state law did not preempt the Ordinances. In pertinent part, the Court of Appeals explained:

As noted earlier, home rule cities like defendant are still granted the authority to take measures to assure public peace and safety. See n. 2. That authority includes the prohibition of weapon discharges within city limits, and that authority has not been repealed by § 41901. *Plaintiffs have not presented a persuasive reason for*

this Court to distinguish MUCC's holding that firearm control is a subject distinct from the field of hunting control. We therefore conclude that § 41901 does not preempt Saginaw City Ordinances, tit 10, §§ 130.02 and 130.03(D).

[Cyzmbor's Timber, *supra*, at 559 (Emphasis added).]

Plaintiffs subsequently applied for leave to appeal to this Honorable Court. In an Order entered July 21, 2006 (Exhibit A), this Court granted Plaintiffs' Application for Leave to Appeal and in so doing invited the participation of MUCC and various others as Amicus Curiae.

III. ARGUMENT AND LAW

A. STANDARD OF REVIEW

Questions of preemption, because they involve issues of statutory construction, as well as orders granting or denying motions for summary disposition, are subject to de novo review by this Court. *City of Taylor v The Detroit Edison Co.*, 475 Mich 109, 115; 715 NW2d 28 (2006); *Homer Township v Billboards by Johnson, Inc.*, 268 Mich App 500, 502; 708 NW2d 737 (2006).

B. **ABSENT AN EXCEPTION FOR LAWFUL HUNTING ACTIVITIES, THE ORDINANCES ARE PREEMPTED BY PART 419 AND OTHER PROVISIONS OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT ("NREPA"), WHICH VEST IN THE MICHIGAN DNR THE EXCLUSIVE AUTHORITY TO REGULATE HUNTING IN MICHIGAN.**

In *People v Llewellyn*, 401 Mich 314; 257 NW2d 902 (1977), this Court outlined the two circumstances under which a municipal ordinance will be found to be preempted by state law. First, a municipality will be precluded from enacting an ordinance where the ordinance is in "direct conflict with the state statutory scheme." *Id.* at 322. Under *Llewellyn*, a direct conflict exists where "the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits." *Id.* at 322, n. 4. Second, even where no direct conflict exists, preemption will be found where "the state statutory scheme preempts the ordinance by occupying the field of

regulation which the local government seeks to enter, to the exclusion of the ordinance. *Id.* at

322. Such a determination involves consideration of the following four factors:

- 1) Whether the state law expressly provides that the state’s authority to regulate in a specified area of the law is to be exclusive;
- 2) Whether preemption can be implied through an examination of legislative history;
- 3) Whether the pervasiveness of the state regulatory scheme supports a finding of preemption; and
- 4) Whether the nature of the subject matter regulated demands exclusive state regulation to achieve the uniformity necessary to serve the state’s purpose or interest.

[*Id.* at 322-325.]

In the present case, there can be no question that the Ordinances are preempted. By failing to provide an exception for lawful hunting activities, the Ordinances permit the City to regulate – albeit indirectly – the sport of hunting by means of a blanket prohibition against the discharge of certain weapons such as firearms and bows and arrows anywhere within the City. As noted above, however, and as Plaintiffs correctly point out, the authority to regulate “the taking of game” in Michigan rests “exclusively” with the DNR. MCL 324.40113a(2)⁶. Because the Ordinances permit the City to regulate matters committed exclusively to the DNR, the Ordinances are invalid under *Llewellyn’s* “direct conflict” test.

A finding of preemption is further compelled in this case by the fact the legislature has promulgated, in the form of Part 419 of NREPA, a detailed regulatory scheme that discloses a clear intent to occupy the field of hunting regulation to the exclusion of municipal police power

⁶ MCL 324.40104 defines “take” to mean “to hunt with any weapon, dog, raptor, or other wild or domestic animal trained for that purpose; kill; chase; follow; harass; harm; pursue; shoot; rob; trap; capture; or collect animals, or to attempt to engage in such an activity.”

regulations that might otherwise restrict hunting. The pertinent statutory provisions are MCL 324.41901 and MCL 324.41902, which provide, in relevant part, as follows:

(1) *In addition to all of the department powers, in the interest of public safety and the general welfare, the department may regulate and prohibit hunting, and the discharge of firearms and bow and arrow, as provided in this part, on those areas established under this part where hunting or the discharge of firearms or bow and arrow may or is likely to kill, injure, or disturb persons who can reasonably be expected to be present in the areas or to destroy or damage buildings or personal property situated or customarily situated in the areas or will impair the general safety and welfare. In addition, the department may determine and define the boundaries of the areas. Areas or parts of areas may be closed throughout the year. The department, in furtherance of safety, may designate areas where hunting is permitted only by prescribed methods and weapons that are not inconsistent with law. Whenever the governing body of any political subdivision determines that the safety and well-being of persons or property are endangered by hunters or discharge of firearms or bow and arrows, by resolution it may request the department to recommend closure of the area as may be required to relieve the problem. Upon receipt of a certified resolution, the department shall establish a date for a public hearing in the political subdivision, and the requesting political authority shall arrange for suitable quarters for the hearing. The department shall receive testimony on the nature of the problems resulting from hunting activities and firearms use from all interested parties on the type, extent, and nature of the closure, regulations, or controls desired locally to remedy these problems.*

(2) *Upon completion of the public hearing, the department shall cause such investigations and studies to be made of the area as it considers appropriate and shall then make a statement of the facts of the situation as found at the hearing and as a result of its investigations. The department shall then prescribe regulations as are necessary to alleviate or correct the problems found.*

[MCL 324.41901 (emphasis added)]

(1) *The department shall submit its findings and recommendations to the governing body of the political subdivision concerned. By majority vote, the governing body shall advise the department by certified resolution that it approves or disapproves the prescribed hunting or firearms controls. If the governing body disapproves the prescribed controls, further action shall not be taken. If the governing body approves the prescribed controls, a local ordinance shall be enacted in accordance with the provisions of law pertaining to the enactment of ordinances, which ordinance shall be identical in all respects to the regulations prescribed by the department. A certified copy of the ordinance shall be forwarded to the department. The governing body of the political subdivision,*

having established such an ordinance, by majority vote, may repeal the ordinance at any time. The department shall be informed of such action by certified resolution.

[MCL 324.41902(1) (emphasis added)].

On their face, these provisions are directly in line with the “exclusive authority” of the DNR to regulate the taking of game in Michigan, MCL 324.40113a(2), as well as the legislature’s express declaration that “sound scientific management” of Michigan’s wildlife populations are “in the public interest.” MCL 324.40113a(1)(b). Before an ordinance is passed, the statute requires that the DNR conduct a public hearing, at which testimony is received from all interested parties on both “the nature of the problems resulting from hunting activities and firearms use,” as well as the “type, extent, and nature of the closure, regulations, or controls desired locally to remedy these problems.” MCL 324.41901(1). Consistent with its obvious level of expertise, the DNR is then charged with the obligation to 1) perform any “investigations and studies” it considers appropriate, 2) render factual findings based on those investigations, studies and hearing testimony, and 3) prescribe whatever regulations it deems necessary “to alleviate or correct the problems found.” MCL 324.41901(2). The DNR’s findings are then submitted to the municipal governing body, which, if it approves the findings, must enact an ordinance *adopting the prescribed controls without change*. MCL 324.41902(1). Should the municipality disapprove of the prescribed controls, the statute provides unequivocally that “further action shall not be taken.” *Id.*

In light of this pervasive, detailed, and technical procedure, it strains credulity for the City or anyone else to suggest that invoking the procedures set forth in MCL 324.41901 is somehow optional, and that local governments can lawfully enact sweeping bans on firearm

discharges and the use of bows and arrows without providing an exception for licensed hunting.

As the Plaintiffs argue succinctly at page 11 of their brief:

The statute clearly indicates that it is the prerogative of the DNR to dictate the contents of any ordinance concerning hunting or the discharge of firearms or bows. *If the City of Saginaw is correct that compliance with that statute is optional or precatory, then the statute would be of no value whatsoever; no local government would voluntarily cede control over hunting and firearms to the DNR if it were possible to engage in unfettered regulation simply by avoiding consultation with the DNR in the first place. By articulating a clear and detailed statutory procedure, the Legislature has indicated cities must work with the DNR to close hunting areas, not apart from it.* Accepting the City of Saginaw's arguments will render the procedure for consultation with the DNR meaningless, and defeat the Legislature's intent in enacting MCL 324.41901. (Emphasis added).

In addition to the foregoing, the need for uniform, statewide regulation of hunting activities also mandates a finding of preemption in this case. *Llewellyn, supra*. As indicated previously, the legislature has declared that Michigan's wildlife populations are of "paramount importance" to the citizens of this state. MCL 324.40113a(1)(a).⁷ To preserve this vital Michigan resource, the legislature has also declared that "principles of sound scientific management" shall be utilized to the "greatest extent practicable" in making decisions regarding the taking of game. MCL 324.40113a(2). Allowing individual municipalities to regulate hunting can only result in a "patchwork" of local regulation that would severely impair the DNR's efforts to scientifically manage Michigan's wildlife populations, which this year alone includes the management of approximately *1.6 million* deer. (Exhibit D). As Plaintiffs correctly point out, wildlife such as deer "generally have little regard for political boundaries." (See Plaintiffs' Brief at p. 19). Likewise, "patchwork" regulation poses significant problems for the unwary hunter, who may inadvertently cross a municipal boundary while otherwise engaged in lawful pursuit of

⁷ Indeed, "all animals found in this state, whether resident or migratory and whether native or introduced" are deemed to be "the property of the people of the state," and their taking "shall be regulated by the department as provided by law." MCL 324.40105.

state regulated game, which this year is expected to include the harvesting of 425,000 deer. (Exhibit D).

For these obvious and very compelling reasons, the “nature of the regulated subject matter” warrants a finding of preemption in this case. *Llewellyn, supra.* at 326. Nothing short of a uniform statutory scheme is necessary to “achieve the purposes and protect the values” of sound wildlife management embodied in MCL 324.40113a. *Id.*

Finally, MUCC submits that statewide regulation provides the “fairest means” of regulating hunting activities that occur at various locations throughout the state of Michigan and its communities. *Llewellyn, supra.* at 330. As noted above, according to the 2001 National Survey, 595,000 of Michigan’s 754,000 hunters (79% of the total) hunt on private land (See 2001 National Survey, Exhibit C at p. 24, Table 14). Nearly 96% of those who hunt on private land—570,000 hunters in all—are Michigan residents. MUCC submits that fundamental fairness demands that those Michigan residents who over the years have leased and/or utilized their private property for lawful hunting purposes should not have those rights subjected to divestment at the whim of local governing bodies. This is especially true given that a detailed statutory procedure exists whereby local governments can have their concerns addressed after proper investigation and fact-finding by state agents who possess the requisite expertise.

IV. CONCLUSION AND RELIEF REQUESTED

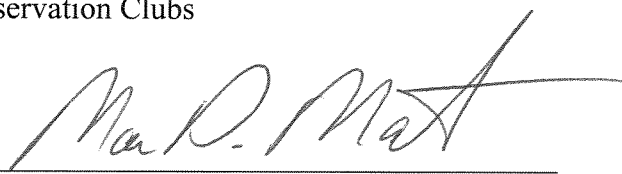
Whether viewed from the perspective of conservation, economic well-being, or any combination of the two, proper regulation of hunting activities is critical to the State of Michigan and its citizenry. Allowing local governments to impact hunting through what is destined to become a patchwork of local regulation can only serve to impair the state’s efforts at sound wildlife management, and further cripple Michigan’s already struggling economy. Accordingly,

for all the within state reasons, MUCC respectfully requests that this Honorable Court reverse the decision of the Court of Appeals and find the Ordinances preempted as a matter of law to the extent they impact lawful hunting activities.

Respectfully submitted,

FOSTER ZACK LITTLE PASTEUR &
MANNING, PC
Attorneys for Amicus Curiae Michigan United
Conservation Clubs

Dated: OCT. 9, 2006

By: 

J. Kevin Winters (P59405)

Marc D. Matlock (P47240)

Business Address:

2125 University Park Drive, Suite 250

Okemos, Michigan 48854

Telephone: (517) 706-0000